

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MICHAEL L. CLEAVER,

Petitioner,

-vs-

Deborah Timmerman-Cooper, Warden,

Respondent.

:

Case No. 3:07-cv-396

:

District Judge Walter Herbert Rice
Chief Magistrate Judge Michael R. Merz

:

REPORT AND RECOMMENDATIONS

Upon examination of the docket of the Montgomery County Common Pleas Court, it appears that that Court has, in response to Petitioner's Motion for New Trial, recently entered an amended judgment.

Because the Petition herein complains of a judgment which has now been set aside, it is respectfully recommended that the Petition herein be dismissed as moot, without prejudice to any claims Petitioner may have with respect to the amended judgment.

July 29, 2008.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C),

or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).